

Delhi High Court

Jatin Singh vs Kendriya Vidyalaya Sangathan on 9 November, 2012

Author: D.Murugesan,Chief Justice

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) No.4194 of 2011  
&  
W.P.(C) No.801 of 2012

Reserved on: 10th October, 2012.  
Pronounced on: 09, November, 2012.

+ W.P.(C) No.4194/2011  
JATIN SINGH

..... Petitioner

Through:

Mr. Ashok Agarwal along with Mr.  
Khagesh B. Jha and Ms. Nisha Tomar,  
Advocates.

versus

KENDRIYA VIDYALAYA SANGATHAN

..... Respondent

Through:

Mr. S. Rajappa along with Mr. H.  
Jayaraman and Dr. Puran Chand,  
Advocates for R-1.  
Mr. Rajeeve Mehra, ASG along with Mr.  
Neeraj Chaudhari, CGSC, Mr. Ravjyot  
Singh, Advocate for UOI.

+ W.P.(C) No.801/2012  
SOCIAL JURIST, A CIVIL RIGHTS GROUP

..... Petitioner

Through:

Mr. Ashok Agarwal along with Mr.  
Khagesh B. Jha and Ms. Nisha Tomar,  
Advocates.

versus

KENDRIYA VIDYALAYA SANGATHAN

..... Respondent

Through:

Mr. Rajeeve Mehra, ASG along with Mr.  
Sumeet Pushkarna, CGSC and Mr. Gaurav  
Sharma, Advs. for UOI.  
Mr. S. Rajappa along with Mr. H.  
Jayaraman and Dr. Puran Chand,  
Advocates for R-1.

W.P.(C) No.4194 of 2011 & W.P.(C) No.801 of 2012

Page 1 of 19

Mr. V.C. Jha along with Ms. Sonia  
Sharma, Advs. for R-3.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

D. MURUGESAN, Chief Justice

1. The following short but an important question arises for our consideration and a decision:

â Whether the school falling under the definition of Section 2(n) of the Right of Children to Free and Compulsory Education Act, 2009 could apply the rule of reservation and allot a specified number of seats to Scheduled Caste and Scheduled Tribe candidates out of 25% of the seats reserved for children belonging to economically weaker section and disadvantaged group under Section 12(1)(c) of the said Act.â

2. Both the writ petitions get disposed by this common order. appreciation of issues raised, we refer to the facts culled out from the petition in WP(C) No.4194/2011. The petitioner's father applied on 08.3.2011 for admission of the petitioner in Class-I in Kendriya Vidyalaya School (hereinafter referred to as â School') as against 25% of the seats earmarked for the children belonging to economically weaker section and disadvantaged group for free and compulsory elementary education in terms of Section 12(1)(c) of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as â the Act') for the Academic Year 2011-12. He was

For

W.P.(C) No.4194 of 2011 & W.P.(C) No.801 of 2012

Page 2 of 19

denied admission by the school on the ground that out of 25% of the seats allotted, 15% of the seats were earmarked for SC, 7.5% seats for ST and the remaining 2.5% seats for other weaker section as against the total 10 seats representing 25%. In the result, 6 seats were earmarked for SC candidates, 3 seats for ST candidates and the remaining 1 seat was earmarked for the children belonging to economically weaker section/below poverty line/Other Backward Classes (Non-Creamy Layer)/Disabled children, which will also be subjected to random method (lottery system) to select one candidate. As the petitioner did not come within the zone of consideration against the one seat, he was not selected. This necessitated the petitioner to question the classification of 25% seats as unconstitutional, arbitrary, discriminatory, illegal and contrary to the provisions of â the Actâ . With the same grievance, the petitioner has also sought for direction to school to reframe its admission guidelines for the Academic Year, 2012-13.

3. W.P. (C) No.801 of 2012 is filed by Social Jurist, A Civil Rights Group and the petitioner in this petition is also seeking for a similar relief for quashing the very same clause.
4. In order to answer the issue, it is necessary for us to look into the circumstances under which the said Act came to be enacted. Part IV of

the Constitution of India relates to Directive Principles of State Policy. Article 41 directs that the State shall, within the limits of its economic capacity and development, make effective provision for securing to

W.P.(C) No.4194 of 2011 & W.P.(C) No.801 of 2012

Page 3 of 19

right to work, to educate and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want. The Supreme Court in Samir Vs. State AIR, 1982 SC 66 and in Mohini Jain Vs. State of Karnataka, AIR 1992 SC 1858 held that the directive principles are not fundamental rights and are not judicially enforceable as such. However, once the State by either its legislative or administrative action provides facilities for education, such action must conform to the standard of equality and rationality underlying Article 14 of the Constitution of India.

5. Having noticed that the directive principles cannot be enforced as fundamental rights and only in the event such facilities are extended by the State either through legislation or by administrative action and in which the Courts are empowered to test the same as not offending Article 14 or Article 21A of the Constitution of India, Article 21A was inserted by the Constitution (86th Amendment) Act, 2002. By that Article, it is provided that the State shall provide free and compulsory education to a child of the age between 6 and 14 years in such a manner as the State may, by law, determine. A right which was originally recognized only at the discretion of the State by means of directive principles of State policy was made as fundamental right for a child of the age between 6 and 14 years to seek for free and compulsory education.

W.P.(C) No.4194 of 2011 & W.P.(C) No.801 of 2012

Page 4 of 19

6. Realising the need for providing education to all children, the Right of Children to Free and Compulsory Education Act, 2009 was enacted with the following objects:

- â (a) that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards;
- (b) â compulsory education' casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education;
- (c) â free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or

expenses which may prevent him or her from pursuing and completing elementary education;

- (d) the duties and responsibilities of the appropriate Governments, local authorities, parents, schools and teachers in providing free and compulsory education; and
- (e) a system for protection of the right of children and a decentralized grievance redressal mechanism.â

7. Section 12 of the Act reads as under:

â 12 Extent of Schools Responsibility for Free and Compulsory Education. -

(1) For the purposes of this Act, a school -

(a) specified in sub-clause (i) of clause (n) of Section 2 shall provide free and compulsory elementary education, to all children admitted therein.

(b) xxx

W.P.(C) No.4194 of 2011 & W.P.(C) No.801 of 2012

Page 5 of 19

(c) Specified in sub-clauses (iii) and (iv) of Clause (n) of Section 2 shall admit in Class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:

Provided further that where a school specified in Clause (n) of Section 2 imparts pre-school education, the provisions of Clauses (a) to (c) shall apply for admission to such pre-school education.â

- 8. By the above provision, it is the responsibility of the school specified in sub-Clauses (iii) and (iv) of Clause (n) of Section 2 of the Act to admit the children belonging to weaker section and disadvantaged group in the neighbourhood in Class-I to the extent of at least 25% of the strength of that Class. The school in question falls under the above specified category and to this extent, there is no dispute. In fact, the school has also earmarked 25% of the strength in first class for admission to a child covered under the Act.
- 9. The controversy arose when the school out of 25% of the strength of first class had further classified the said percentage of seats and earmarked 15% of the seats out of 25% to the children belonging to SC and 7% seats to ST leaving the remaining 2.5% of seats to the children belonging to weaker section etc. The said classification was made on

the basis of guidelines framed under Section 35 of the Act for admission of the students for the Academic Year, 2012-13. relevant guidelines are as follows:

The

W.P.(C) No.4194 of 2011 & W.P.(C) No.801 of 2012

Page 6 of 19

â 5. Method of Admission

A. In Class I (RTE Act 2009-Section 12(1)(c))

To fulfil the Constitutional mandate of reservation to SC/ST and also to implement the provisions of RTE Act under Rule 12(1)(c) following procedure shall be adopted for admission to Class-I (with class strength of 41).

1. In first phase 31 seats in Class I should be filled as per existing category system in KVS irrespective of reservation. (However, 01 seat may be granted to disabled child of any category under 3% horizontal reservation).
2. The children secured admission in 1st phase will not be included in 2nd phase (RTE system). However, the unsuccessful candidates in 1st phase, if otherwise, eligible in RTE quota will be included in 2nd phase (RTE Quota).
3. In 2nd phase, the remaining 10 seats will be filled as per RTE provisions (25% of seats)
  - (a) All applications of Scheduled Caste candidates will be subjected to random method (Lottery System) to select 6 candidates.
  - (b) All applications of Economically Weaker Section (EWS/Below Poverty Line (BPL/OBC (Non Creamy Layer)/Disable Children will be subjected to random method (Lottery System) to select 1 candidate.

Note: If adequate number of candidates are not available in (a), (b) & (c), the admission may be granted by inter changing the above three categories to fill all 10 seats in above sequence. In no case, these seats will be de-reserved for General Category.

If required number of candidates covered under RTE do not register in 1st spell of registration then a second notification may be given in the month of April itself.

W.P.(C) No.4194 of 2011 & W.P.(C) No.801 of 2012

Page 7 of 19

The definition/eligibility criteria of Economically Weaker Section/BPL/OBC (Non Creamy Layer) may be verified

from the notification of the concerned State Governments.â

10. It is the contention of the school that these guidelines were framed under Section 35 of the Act by the Central Government. It is the further contention that the guidelines are binding in nature and therefore the reservation applied to 25% of the total strength could not be contrary to the provisions of Section 12(1)(c) of the Act.
  
11. In order to answer the above question, it is necessary for us to trace as to the power of the Central Government, appropriate government and the local authority to issue guidelines under Section 35 of the Act. In terms of Clause (1) of Section 35, Central Government may issue such guidelines to the appropriate Government or as the case may be, the local authority as it deems fit for the purpose of implementation of the provisions of the Act. The above Clause would apply in case the guidelines are issued by the Central Government to the appropriate Government or the local authority for the purpose of implementation of the Act. The right of the school to classify the categories of the students to be admitted under Section 12(1)(c) of the Act is not traceable to the above provision. Clause (2) of Section 35 empowers the appropriate Government to issue guidelines and give such directions to the local authority or the School Management Committee regarding the implementation of the provision. This provision is also only in respect of the guidelines that may be issued by the appropriate

W.P.(C) No.4194 of 2011 & W.P.(C) No.801 of 2012

Page 8 of 19

Government to the School Management Committee only for the purpose of implementation of the provision of the Act and does not empower the appropriate Government to issue guidelines for classifying or categorizing children for their entitlement to admission under Section 12(1)(c) of the Act. Clause (3) of Section 35 empowers the local authority to issue similar guidelines and even that Clause does not empower the authority to issue guidelines contravening the right conferred on the child covered under Section 12(1)(c) of the Act. No case law needs to be referred to hold that guidelines cannot either override the provisions of the Act or a right conferred under the Act for the matter. Section 35 can be pressed into service only for the purpose of implementation of the provisions of the Act and not to dilute the right conferred thereunder. Hence, the contention of the school that the classification made pursuant to the guidelines issued under Section 35 of the Act is only liable to be rejected. That apart, except a copy of the guidelines for admission to the school in question for the Academic Year, 2012-13 is produced, no copy of guidelines issued by the appropriate government is produced barring a statement in the counter-affidavit made to the effect that the guidelines were issued by the Central Government in accordance of the provisions of Section 35(1) of the Act.

12. As already observed, Section 12(1)(c) of the Act does not contemplate

any classification among the children belonging to weaker section and disadvantaged group. In this context, we may also refer to the following definitions, which are relevant for our purpose:

W.P.(C) No.4194 of 2011 & W.P.(C) No.801 of 2012

Page 9 of 19

â Section 2: Definition.-

- (c) "child" means a male or female child of the age of six to fourteen years;
- (d) "child belonging to disadvantaged group" means a child belonging to the scheduled caste, the scheduled tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification;
- (e) "child belonging to weaker section" means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification;
- (ee) â child with disabilityâ includes, -
  - (A) a child with â disabilityâ as defined in clause (i) of Section 2 of the Persons with Disabilities (Equal Opportunity, Protection or Rights and Full Participation) Act, 1995;
  - (B) a child, being a person with disability as defined in clause (j) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999);
  - (C) a child with â service disabilityâ as defined in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999).
- (n) "School" means any recognized school imparting elementary education and includes--

W.P.(C) No.4194 of 2011 & W.P.(C) No.801 of 2012

Page 10 of 19

- (i) a school established, owned or controlled by the appropriate Government or a local authority;

- (ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;
- (iii) a school belonging to specified category; and
- (iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;

Section 3: Right of child to free and compulsory education.

(1) Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education.

(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education:

(3) A child with disability referred to in sub-clause (A) of clause (ee) of section 2 shall, without prejudice to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), and a child referred to in sub-clauses (B) and (C) of clause (ee) of section 2, have the same rights to pursue free and compulsory elementary education which children with disabilities have under the provisions of Chapter V of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996):

Provided that a child with â multiple disabilitiesâ referred to in clause (h) and a child with â severe disabilityâ W.P.(C) No.4194 of 2011 & W.P.(C) No.801 of 2012 Page 11 of 19 referred to in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999) may also have the right to opt for home based education.â

13. In terms of Clause (c) of Section 2 of the Act, a child means a male or female child of the age of six to fourteen years. The above definition does not make any disparity among the children except as to their age between 6 to 14 years. Clause (d) of Section 2 of the Act extends the benefit of the Act to children belonging to disadvantaged group.

- (i) a child with disability; or
- (ii) a child belonging to SC, ST, socially and educationally

backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government by the notification.

14. Reading of the above definition makes it clear that there is no classification made among the children covered under the definition except in case of socially and educationally backward class or



such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the Central Government, appropriate Government or the local authority, as the case may be, by a notification.

W.P.(C) No.4194 of 2011 & W.P.(C) No.801 of 2012 Page 12 of 19

15. We are unable to read anything more enabling the provision to make further classification from among the children belonging to disadvantaged group. Likewise, Clause (e) of Section 2 of the Act defines a child belonging to weaker section meaning thereby a child belonging to such parent or guardian whose only income is lower than the minimum limit specified by the appropriate Government by notification. To bring a child under the above Clause, the said child should fall within the minimum limit of annual income of the parent or the guardian as specified by the appropriate Government by notification and nothing more. The said Clause also does not make any further classification among the children. In fact, a child with disability defined under Clause (d) of Section 2 has been further defined under Clause (ee) of Section 2 of the Act by Amendment Act 30 of 2012. Sub-clause (A) of Clause (ee) of Section 2 of the Act, a child with disability is one as defined in Clause (i) of Section 2 of the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995. A combined reading of the definitions of a child belonging to disadvantaged group and a child belonging to weaker section and a child with disability as defined under the Disabilities Act, 1995 does not permit a further classification from among the children falling under those categories.

16. Section 3 of the Act contemplates that every child of the age of 6 to 14 years including a child referring to Clause (d) or (e) of Section 2 of the Act shall have a right to free and compulsory education in a neighbourhood school till the completion of his or her elementary W.P.(C) No.4194 of 2011 & W.P.(C) No.801 of 2012 Page 13 of 19 education. The said provision does not make any classification among the children as to their entitlement to the benefit of the Act including the children referred to in Clause (d) or (e) of Section 2 of the Act. As already noted, there is no dispute that the school in question is also covered under the provisions of Section 2(n) of the Act. It is also not in dispute that the petitioner hails from neighbourhood and is entitled to apply for admission in terms of Section 12(1)(c) of the Act. Therefore, while applying Section 2(1)(c) of the Act, the school should consider all the children belonging to weaker section and disadvantaged group to provide a free and compulsory education without there being a further classification.

17. In this context, we may also refer that the right to education has been universally recognized since the Universal declaration of Human Rights in 1948. The importance of right to education was recognized by the founders of the Constitution while they incorporated Article 41 under Part IV of Directive Principles of State Policy enabling the State to recognize the right to education and to make laws. Later, the right to education was made as a fundamental right by inserting Article 21A for the children of the age group between six and fourteen years. Likewise, clause (k) in Article 51A relating to fundamental duties was inserted emphasizing the duties of every citizen of India who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years. The right to education can be viewed on three aspects. As far as the role of the parents or the guardians, as the case may be, it has been made as a duty

W.P.(C) No.4194 of 2011 & W.P.(C) No.801 of 2012 Page 14 of 19 in terms of Article 51A(k) of the Constitution of India. As far as the entitlement of the children between age 6 to 12 years is concerned, it is recognized as fundamental right under Article 21-A of the Constitution of India subject to the manner determined by law by the State. Correspondingly, it is the duty of the State as well to make necessary provision for enforcement of the above fundamental right through enactments. As education is considered to be a human right, it is a basic right to an individual to live with human dignity. It promotes individual liberty, empowerment and all round development. As far as the child is concerned, education is important as basically it enables a child to develop and realize full potential as human being, to develop the ability to take independent decision, to develop a sense of self-respect and to develop self-confidence. The right to education also includes a responsibility to provide basic education for individuals who have not completed primary education. The above can be best achieved, if children belonging to weaker section and disadvantaged groups between 6 to 14 years of age are offered free and compulsory education. Apparently, keeping the said principles in mind only the Act was enacted and a special provision of Section 12(1)(c) was made earmarking at least 25% of the seats for children belonging to weaker and disadvantaged group. For the said entitlement, there cannot be a further classification which will amount to discrimination.

18. A further argument is advanced to sustain the stand that the classification was made keeping in mind Article 15 of the Constitution of India. Clause (1) of Article 15 of the Constitution mandates that the W.P.(C) No.4194 of 2011 & W.P.(C) No.801 of 2012 Page 15 of 19 State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. However, an exception is carved out by virtue of Clause (4) of Article 15 to empower the State to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the SC and ST. In order to give effect to the said provision, there must be a special provision made by the State. Except the guidelines, which are in the nature of prospectus for admission is produced, no other enactment making any special provision in terms of Clause (4) of Article 15 of the Constitution is shown. Even otherwise, a provision could be made for the advancement of any socially and educationally backward classes of citizens or for the SC and ST in respect of seats not covered under Section 12(1)(c) of the Act, which is special provision for children. In fact, Clause (4) of Article 15 of the Constitution does not make any difference between children or adult insofar as empowering the State from making special provision for of any socially and educationally backward classes of citizens or for the SC and ST and in terms of the Act, it specifically makes the children entitled for admission to school.

19. The above discussion would show that though the reservation is permissible as provided under Clause (4) of Article 15 of the Constitution, that reservation cannot be made applicable to 25% of the seats earmarked for the children falling under the definition of Clauses

(d) and (e) of Section 2 read with Section 12(1)(c) of the Act. Of course, it is not as if the school cannot have a clause to reserve the seats W.P.(C) No.4194 of 2011 & W.P.(C) No.801 of 2012 Page 16 of 19 for the benefit of SC and ST candidates, as such reservation is permissible in respect of remaining 75% of the seats. On the contrary, at the guise of invoking Clause (4) of Article 15 of the Constitution of India, the school cannot carve out certain percentage of the seats out of 25% earmarked for the children falling under Section 12(1)(c) and reserve for SC and ST candidates.

20. Incidentally we may also refer to the given facts of the case. Totally, 10 seats were earmarked representing 25% of the seats under Section 12(1) of the Act. As 15% of the seats were allotted to SC candidates, i.e., 6 students were admitted under the said category and 7.5% seats were allotted to ST candidates thereby 3 seats were to be allotted to ST candidates and leaving only one seat for the children belonging to weaker section and disadvantaged group. In the event, the classification made by the school through its guidelines is implemented, the resultant position would be only to frustrate the provision of the Act whereby the children belonging to weaker section and disadvantaged group would be deprived of their legitimate share in the admission.

21. In view of the above discussion, we are of the considered view that Clause 5(3) of the Guidelines for admission to school in question in the Academic Year, 2012-13 would be contrary to the provision of Section 12(1)(c) of the Act and classification would amount to discrimination among the children falling under the definition of Clauses (d) and (e) of Section 2 of the Act. Though the respondents have referred some of W.P.(C) No.4194 of 2011 & W.P.(C) No.801 of 2012 Page 17 of 19 the judgments of the Apex Court relating to the constitutional mandate of reservation to persons belonging to SC and ST, in our opinion, those judgments cannot be pressed into service on the facts of this case in view of the special enactment, namely, Right of Children to Free and Compulsory Education Act, 2009 in order to give effect to the fundamental right guaranteed under Article 21 of the Constitution of India and more particularly the definition of Section 12(1)(c) of the said Act.

22. For all these reasons, we are inclined to accept the case of both the petitioners and declare that Clause 5(3) of the Admission Guidelines of the School for admission to the school in Class-I in the Academic Year, 2011-12 introducing reservation to the extent of 22.5% of total seats for SC/ST out of 25% seats reserved for children belonging to disadvantaged group and children belonging to economically weaker section is illegal and contrary to the provisions of the said Act.

23. Accordingly, Prayer-I is ordered.

24. The petitioner has prayed for appropriate direction directing the school to reframe its admission guidelines. For the reasons stated above, we direct the school to reframe its guidelines for admissions in the ensuing Academic Year, 2013-14.

25. Insofar as the Prayer-III is concerned, the petitioner seeks for a direction to consider the case for admission in Class-I for the Academic W.P.(C) No.4194 of 2011 & W.P.(C) No.801 of 2012 Page 18 of 19 Year, 2011-12, as the said Academic Year is already over, we are not inclined to issue such a direction.

26. Writ petitions are ordered accordingly.

CHIEF JUSTICE (RAJIV SAHAI ENDLAW) JUDGE NOVEMBER 09, 2012 pmc W.P.(C) No.4194 of 2011 & W.P.(C) No.801 of 2012 Page 19 of 19